

REJECTION UNDER §102

Claims 27- 29 have been rejected under 35 U.S.C. §102(b) or §102(e) as being anticipated by Barnes (U.S. 4,721,723) or Ward et al. (U.S. 5,872,132). This rejection is respectfully traversed.

Applicants traverse this rejection on the grounds that the subject matter of claim 27 was patented in claims 2 and 4 of U.S. Patent 6,063,927 (Craig et al.). That is, to the extent the U.S. Patent and Trademark office has already indicated the patentability of this kind of subject matter, it is Applicants' earlier filed application that is entitled to such patent protection. As indicated in Applicants' Preliminary Amendment of May 16, 2001, the purpose of this application is to seek a Declaration of Interference with the Craig et al. patent. Applicants would prefer to not cancel claims 27-29 at the present time and instead resolve this issue during the interference. In as much as claim 26 is allowable, Applicants believe that an interference should now be declared. Accordingly, reconsideration of this rejection is requested.

REJECTION UNDER §103

Claims 24 and 25 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Stemp et al. (EP 190,496) in view of Barnes et al. (U.S. 4,721,723). This rejection is respectfully traversed.

Applicants respectfully disagree with the Examiner's assertion that Stemp generically disclosed the presently claimed starting material, namely paroxetine methanesulfonate. The

various pharmaceutically acceptable salts set forth on page 3 of Stemp et al. refer to compounds of formula I. However, paroxetine is not included within the scope of formula I. Thus, there is no suggestion in Stemp et al. of forming paroxetine methanesulfonate, much less of further converting paroxetine methanesulfonate into paroxetine hydrochloride as per the presently claimed subject matter.

Moreover, such a conversion can produce paroxetine hydrochloride salt in high purity. This is in contrast to the examples set forth on pages 51 and 52 of Stemp et al., wherein Stemp et al. seeks to resolve the paroxetine isomers by use of a chiral salt. This example in Stemp et al. in no way suggests the Applicants' claimed invention nor the benefits that can be obtained by the use of paroxetine methanesulfonate.

Therefore, the Examiner's rejection fails to create a *prima facie* case of obviousness and furthermore, fails to take into account the unexpected advantages achieved by the presently claimed invention. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

### **CONCLUSION**

In view of the remarks, all claims pending in the present application, define novel, patentable subject matter. Reconsideration of the rejections and allowance of the application are respectfully requested.

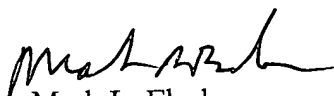
Should the Examiner have any questions, regarding this application, she is encouraged to contact applicants' undersigned representative at 703 502 9440.

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Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 16-0607 and please credit any excess fees to such deposit account.

Respectfully submitted,  
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